Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Sprint PCS and AT&T File Petitions	)	WT Docket No. 01-316
For Declaratory Ruling On	)	
CMRS Access Charges Issues	)	

REPLY COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits its reply comments in response to the Commission's *Public Notice* in the above-captioned proceeding.[1] Verizon Wireless continues to urge the Commission to confirm that Sprint PCS and other CMRS providers have the right to charge IXCs for the provision of exchange access service.

A large majority of the commenters responding to the Commission's *Public Notice* support the Sprint PCS Petition and CMRS providers' right to impose access charges on IXCs.[2] These commenters agree with Verizon Wireless that the right to charge for access is an established part of the Commission's inter-carrier compensation policy, that the goal of competitive and technological neutrality requires that CMRS providers have this right, and that

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1 "Sprint PCS and AT&T File Petitions For Declaratory Ruling On CMRS Access Charge Issues," *Public Notice,* DA 01-2618, WT Docket No. 01-316 (rel. Nov. 8, 2001).

2 *See*, *e.g.*, Comments of Cellular Mobile Systems of St. Cloud, LLC; Comments of Cingular Wireless LLC; Comments of the Missouri Independent Telephone Company Group; Comments of Nextel Communications, Inc.; Comments of Western Wireless Corporation.

AT&T's refusal to pay Sprint PCS for access is unjust, unreasonable, and discriminatory.[3] Only AT&T, WorldCom, and Qwest Communications favor a prohibition on CMRS access charges. For the reasons described below, their various arguments in support of AT&T's Petition are without merit and should be rejected by the Commission.[4]

I. AT&T AND WORLDCOM FAIL TO IDENTIFY ANY LEGAL BAR TO CMRS PROVIDERS' APPLICATION OF ACCESS CHARGES TO IXCs

Sprint PCS's opponents argue that the Commission has not held definitively that CMRS providers can charge IXCs for exchange access service.[5] This argument is both incorrect and irrelevant. These parties improperly dismiss the significance of the Commission's 1994 detariffing of CMRS access charges and other Commission pronouncements regarding CMRS providers' entitlement to just and reasonable compensation for access services.[6] Even if their interpretation of this precedent were correct, which it is not, CMRS providers' legal right to charge for access and collect payment for previous charges would be unaffected. None of Sprint PCS's opponents has shown that there is any Commission ruling, policy, or provision of the

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3 *See*, *e.g.*, Comments of Cingular; Comments of Nextel; Comments of Western Wireless.

4 Coalitions representing numerous rural and independent ILECs have filed comments supporting the right of Sprint PCS and other CMRS providers to charge IXCs for the provision of exchange access service. *See* Comments of the Missouri Small Telephone Company Group; Comments of the Missouri Independent Telephone Company Group; Comments of Oklahoma Rural Telephone Companies. Several of these commenters have seized on this proceeding as an opportunity to raise inter-carrier compensation issues relating to intra-MTA traffic between their customers and CMRS subscribers. Comments of MITG at 9-10; Comments of ORTC at 5. These issues are outside the scope of the instant proceeding, however, and Verizon Wireless will not address them here. Verizon Wireless and other carriers have discussed such issues in comments filed in the Commission's still-pending general proceeding on inter-carrier compensation. Comments of Verizon Wireless, CC Docket No. 01-92, 40-47 (Aug. 21, 2001).

5 Comments of AT&T at 8-12; Comments of WorldCom at 4-9.

Communications Act that *precludes* CMRS providers from applying access charges to IXCs. To the contrary, the law entitles carriers to recover charges for providing services, including exchange acces. As Verizon Wireless indicated in its comments, the lack of widespread CMRS access charges to date is not the result of any legal obstacle, but rather the product of a variety of administrative and technical issues associated with billing IXCs.[7] Nor should the absence of formal rules on CMRS-IXC access prevent the Commission from requiring IXCs to pay a fair and reasonable rate for this service. After all, the Commission does not regulate the price of service that IXCs charge end-users, yet IXCs have obviously adopted a full variety of rate structures in that context.

II. THERE IS NO BASIS FOR A DISCRIMINATORY ACCESS POLICY

AT&T argues that CMRS providers are in no position to complain about IXCs' refusal to pay CMRS-IXC access charges, in light of the various economic and regulatory advantages enjoyed by CMRS providers. AT&T points to CMRS providers' ability to impose airtime charges on customers receiving calls, the "local" service area for CMRS – the MTA – that is generally larger than the local calling area for landline LECs, and CMRS providers' freedom from equal access obligations.[8]

AT&T's claims are irrelevant to the matters at issue in this case. Even if they were relevant, they would not warrant counterbalancing action by the Commission and cannot justify AT&T's current discrimination against CMRS providers. First, with respect to end-user charges,

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6 *See*, *e.g.*, Comments of Verizon Wireless at 3-5.

7 Comments of Verizon Wireless at 6-7.

8 Comments of AT&T at 20, 25-26.

the Commission in two related instances has determined that the existence of end-user payments is irrelevant to questions of inter-carrier compensation, and the same analysis should apply in the CMRS-IXC context.[9] Second, in selecting the MTA as the local service are for CMRS traffic, the Commission sought a definition that would not create artificial distinctions between different technologies,[10] which is ironically the result AT&T urges the Commission to impose in this case. The MTA definition provides no basis for discriminating against CMRS providers on the issue of access. Finally, Congress' decision to exempt CMRS providers from the requirement of equal access was based on the greater level of competition in the CMRS industry, a dynamic still existing today. The fact that wireless consumers are protected by such competition does not justify depriving CMRS providers of access revenue.[11]

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[9] Comments of Verizon Wireless at 8 nn. 22, 23.

[10] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, para. 1036 (1996). *See also* Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, 8 FCC Rcd 7700, paras. 73-75 (1993) (concluding that combination of MTA and BTA service areas, based on natural flow of commerce and designed to reflect newspaper circulation, economic activities, highway facilities, railroad service, and suburban transportation, may facilitate regional and nationwide roaming, allow licensees to tailor their systems to the natural geographic dimensions of PCS markets, reduce the cost of interference coordination between PCS licensees, and simply the coordination of technical standards).

[11] Congress exempted CMRS providers from its equal access requirement in Section 332(c)(8) of the Communications Act. 47 U.S.C. § 332(c)(8). Congress included a safeguard in this provision, however, to ensure fair treatment of CMRS subscribers. Specifically, Congress provided that if the Commission determines that CMRS subscribers are denied access to the telephone toll services provider of their choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission should adopt rules that enable wireless customers to gain access to an alternative toll service provider.

The right decision in this proceeding is to confirm that CMRS providers may impose access charges on IXCs. All ILECs and CLECs will be receiving access charge revenues for the foreseeable future. Despite the IXCs' assertions to the contrary, CMRS providers will suffer real competitive harm if they continue to go without fair compensation for access.[12] Having consistently cited competitive and technological neutrality as a critical goal, it would be unreasonable for the Commission to deny CMRS providers the same right of compensation simply based on technology.[13]

III. THE REGULATORY FRAMEWORK FOR CMRS-IXC ACCESS RATES WILL NOT BE BURDENSOME

Counter to Qwest's assertion, the process of determining appropriate access rates for CMRS-IXC access will not be more difficult or burdensome for the Commission or for carriers than it has been in other service contexts.[14] As described by Verizon Wireless in its comments, the Commission should adopt a CMRS-IXC access regime that is similar to what it adopted in its

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[12] WorldCom's suggestion that the application of access charges to IXCs would be "disastrous" for CMRS competition is baseless. Comments of WorldCom at 10-11. There is vibrant competition in the CMRS marketplace, a fact that would not be changed by charging for access. Access payments would be far outweighed by revenue from end-users, and CMRS providers would still have enormous incentive to compete for customers.

[13] For IXCs, a prohibition on CMRS-IXC access charges would preserve what can only be described as a "windfall." Free access to wireless networks has meant more net revenue for IXCs, and these carriers have been able to spend this savings in any number of ways (*i.e.*, on increased capacity, development of new services). AT&T's claim that it and other IXCs have chosen to use this revenue to achieve more competitive pricing does not make this free access any less a windfall. *See* Comments of AT&T at 21.

[14] Comments of Qwest at 7-9.

order on the provision of access by CLECs.[15] The regulatory framework for CLEC access is neither onerous nor pervasive. Under that policy, it is presumptively lawful for CLECs to charge access rates up to a specified benchmark or the rate of the competing ILEC, whichever is higher.

The policy that the Commission established in the *CLEC Access Order* is appropriate for the CMRS marketplace, particularly because CMRS providers do not currently tariff services, and the Commission could apply the *CLEC Access Order* framework's presumption of lawful without the need to impose a tariff filing requirement. The Commission should reject Qwest's suggestion that the CMRS-IXC relationship be subject to the bill-and-keep policy adopted by the Commission for ISP traffic,[16] because, as Verizon Wireless stated in its comments,[17] it would be inequitable to apply bill-and-keep to CMRS access while permitting landline carriers to continue to charge for these services.

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[15] Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923 (2001) ("*CLEC Access Order*").

[16] Comments of Qwest at 11-12; *see* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, FCC No. 01-131, CC Docket No. 96-98 (rel. April 27, 2001).

[17] Comments of Verizon Wireless at 6.

IV. CONCLUSION

For the foregoing reasons, Verizon Wireless again urges the Commission to confirm that Sprint PCS and other wireless carriers may collect reasonable access charges from IXCs, and to establish a presumptively lawful "zone of reasonableness" for wireless access rates that wireless carriers can recover without the need for tariffs.

Respectfully submitted,

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